

REFERENCE TITLE: underground facilities; marking procedures.

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2708

Introduced by
Representative Tully

AN ACT

AMENDING SECTION 40-360.22, ARIZONA REVISED STATUTES; RELATING TO UNDERGROUND FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 40-360.22, Arizona Revised Statutes, is amended to
3 read:

4 **40-360.22. Excavations: determining location of underground**
5 **facilities: providing information; excavator**
6 **marking; on-site representative; validity period**
7 **of markings; liability for misuse of locate**
8 **requests; detectible underground locating devices;**
9 **civil penalty**

10 A. A person shall not make or begin any excavation in any public
11 street, alley, right-of-way dedicated to the public use or utility easement,~~—~~
12 OR in any express or implied private property utility easement,~~—~~ without
13 first determining whether underground facilities will be encountered, and if
14 so where they are located from each and every underground facilities operator
15 and taking measures for control of the facilities in a careful and prudent
16 manner.

17 B. Every underground facilities operator shall file with the
18 corporation commission the job title, address and telephone number of the
19 person or persons from whom the necessary information may be obtained. Such
20 person or persons shall be readily available during established business
21 hours. The information on file shall also include the name, address and
22 telephone number of each one-call notification center to which the
23 underground facilities operator belongs. Upon receipt of inquiry or notice
24 from the excavator, the underground facilities operator shall respond as
25 promptly as practical, but in no event later than two working days, by
26 marking such facility with stakes, paint or in some customary manner. No
27 person shall begin excavating before the location and marking are complete or
28 the excavator is notified that marking is unnecessary. If the excavator
29 consents, an underground facilities operator may notify the one-call
30 notification center that marking is unnecessary pursuant to a method
31 established by the one-call notification center. An underground facilities
32 operator may delegate any marking or notification obligations required by
33 this subsection to an agent or servant of the underground facilities
34 operator. An underground facilities operator may notify the excavator that
35 marking is unnecessary pursuant to any mutually agreeable method.

36 C. On a timely request by the underground facilities operator, the
37 excavator shall mark the boundaries of the location requested to be excavated
38 in accordance with a color code designated by the commission or by applicable
39 custom or standard in the industry. A request under this subsection for
40 excavator marking does not alter any other requirement of this section.

41 D. Except as otherwise provided in this section, in performing the
42 marking required by subsection B of this section, the underground facilities
43 operator of an underground facility installed after December 31, 1988 in a
44 public street, alley or right-of-way dedicated to public use, but not
45 including any express or implied private property utility easement, shall

1 locate the facility by referring to installation records of the facility and
2 utilizing one of the following methods:

- 3 1. Vertical line or facility markers.
- 4 2. Locator strip or locator wire.
- 5 3. Signs or permanent markers.
- 6 4. Electronic or magnetic location or tracing techniques.
- 7 5. Electronic or magnetic sensors or markers.
- 8 6. Metal sensors or sensing techniques.
- 9 7. Sonar techniques.
- 10 8. Underground electrical or radio transmitters.
- 11 9. Manual location techniques, including pot-holing.
- 12 10. Surface extensions of underground facilities.

13 11. Any other surface or subsurface location technique that is at least
14 as accurate as the other marking methods in this subsection and that is not
15 prohibited by the commission or by federal or state law.

16 E. Except as otherwise provided in this section, for an underground
17 facility other than one installed after December 31, 1988, in a public
18 street, alley or right-of-way dedicated to public use, in performing the
19 marking required by subsection B of this section, the underground facilities
20 operator may refer to installation or other records relating to the facility
21 to assist in locating the facility and shall locate the facility utilizing
22 one of the methods listed under subsection D of this section.

23 F. If an underground facilities operator is unable to complete the
24 location and marking within the time period provided by subsection B of this
25 section, the facilities operator shall satisfy the requirements of this
26 section by providing prompt notice of these facts to the excavator and
27 assigning one or more representatives to be present on the excavation site at
28 all pertinent times as requested by the excavator to provide facility
29 location services until the facilities have been located and marked. The
30 underground facilities operator shall bear all of its own costs associated
31 with assigning representatives. If representatives are assigned under this
32 subsection, the excavator is not responsible or liable for damage to or
33 repair of the underground facilities operator's underground facility while
34 acting under the direction of an assigned representative of the underground
35 facilities operator, unless the damage or need for repair was caused by the
36 excavator's negligence.

37 G. The marking required by subsection B of this section is valid for
38 fifteen days from the date of the marking, excluding Saturdays, Sundays and
39 other legal holidays. If the excavation will continue past the validity
40 period of the marks as provided by this subsection, the excavator shall
41 notify the underground facilities operator or an organization designated by
42 the underground facilities operator at least two days, excluding Saturdays,
43 Sundays and other legal holidays, before the end of the validity period. All
44 requests for facility markings and requests to extend the validity period of
45 the markings shall be for the purpose of excavating within the validity

1 period of the markings. An excavator that requests facility markings shall
2 limit the request to an area that can reasonably be excavated within the
3 validity period of the markings. A person who violates this subsection is
4 liable to the one-call notification center and to all affected underground
5 facilities operators for any resulting damages, costs and expenses.

6 H. Nothing in this section shall be construed to prevent an excavator
7 and an underground facilities operator from holding a preconstruction
8 conference regarding marking and location of underground facilities and
9 entering into a mutually agreeable written schedule or written arrangement
10 for satisfying the requirements of this section, except that this subsection
11 does not eliminate the excavator's obligation to notify the underground
12 facilities operator to locate and mark excavation sites under subsection B of
13 this section based on the actual construction schedule.

14 I. For abandoned and apparently abandoned underground facilities:
15 1. The underground facilities operator shall notify the excavator
16 whether the facility is active or abandoned. An inactive facility shall be
17 considered active for purposes of this subsection. ~~This section does not
18 obligate any person to represent that an underground sewer facility in any
19 public street, alley, right-of-way dedicated to public use or utility
20 easement is abandoned if it was installed on or before December 31, 2005 and
21 it is not owned by an underground facilities operator of a sewer system.~~

22 2. For an underground facility abandoned after December 31, 1988 or
23 covered by installation records prepared under section 40-360.30, subsection
24 A, the underground facilities operator may not advise or represent to the
25 excavator that a facility or portion of a facility is abandoned unless the
26 underground facilities operator has verified, by reference to installation
27 records or by testing, that the facility or portion is actually abandoned and
28 not merely inactive. For all other abandoned or apparently abandoned
29 underground facilities, each one-call notification center shall establish a
30 method of providing personnel from an underground facilities operator
31 qualified to safely inspect and verify that the facility is abandoned or
32 active and a method for reimbursing the verifying underground facilities
33 operator for the costs incurred. The reimbursement method may not include
34 any charge or expense to the excavator. For the purposes of this article, an
35 underground facilities operator shall not represent that an underground
36 facility is abandoned unless the facility has been verified as abandoned
37 pursuant to this subsection.

38 3. For the purposes of this article, if an excavator encounters an
39 apparently abandoned underground facility, the excavator shall not treat the
40 underground facility as abandoned until the excavator has received
41 notification that the underground facility is abandoned pursuant to paragraph
42 1 of this subsection or has notified the underground ~~facility~~ FACILITIES
43 operator of the apparent abandonment and has received verification of
44 abandonment pursuant to paragraph 2 of this subsection.

1 J. All new and active underground facilities installed in any real
2 property after December 31, 2005 shall be installed with a detectible
3 underground location device unless the facility is capable of being detected
4 from above ground with an electronic locating device. A person who violates
5 this subsection is subject to a civil penalty in an amount not to exceed five
6 thousand dollars. The building official shall administer and enforce this
7 subsection for all underground facilities except those that are installed for
8 a public utility or municipal corporation. Any penalties received by the
9 building official shall be deposited in the municipality's or political
10 subdivision's general fund, as applicable.

11 K. Nothing in this section shall be construed as prohibiting the use
12 of warning tape, warning markers or any other warning device by the
13 underground facilities operator.

14 L. For every underground facilities operator of a sewer system:
15 1. For the purposes of this article, an underground facilities
16 operator of a sewer system is responsible for locating and marking the
17 underground sewer facilities owned by another person pursuant to subsection B
18 of this section if those underground facilities are installed ~~after December~~
19 ~~31, 2005 and are~~ in any public street, alley, right-of-way dedicated to
20 public use or utility easement.

21 2. In performing the marking required by this subsection FOR AN
22 UNDERGROUND FACILITY INSTALLED AFTER DECEMBER 31, 2005, the underground
23 facilities operator of the sewer system shall locate the facility by
24 referring to installation records of the facility and by using one of the
25 methods listed in subsection D of this section. IN PERFORMING THE MARKING
26 REQUIRED FOR AN UNDERGROUND FACILITY INSTALLED BEFORE JANUARY 1, 2006, THE
27 UNDERGROUND FACILITIES OPERATOR OF THE SEWER SYSTEM MAY REFER TO INSTALLATION
28 RECORDS OR OTHER RECORDS RELATING TO THE FACILITY TO ASSIST IN LOCATING THE
29 FACILITY AND SHALL LOCATE THE FACILITY BY USING ONE OF THE METHODS LISTED IN
30 SUBSECTION D OF THIS SECTION.

31 3. This subsection does not obligate an underground facilities
32 operator of a sewer system to locate and mark the underground sewer
33 facilities owned by another person if the customer receiving sewer service
34 from the underground sewer facility refuses to grant permission to the
35 underground facilities operator of a sewer system to access the real property
36 for the purpose of ascertaining the location of the underground sewer
37 facility in any public street, alley, right-of-way dedicated to public use or
38 easement.

39 4. This subsection does not obligate an underground facilities
40 operator of a sewer system to maintain, clean or unstop underground sewer
41 facilities owned by another person.